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REMARKS

This response is intended as a full and complete response to the final Office Action mailed on January 11, 2006. In the Office Action, the Examiner notes that claims 23, 24, 27 and 32-59 are pending of which claims 23, 24, 27, 32-51, and 59 are rejected and claims 52-58 are objected to. By this response, Applicants have amended claims 23, 24, 27, 39, 43, 49, 51 and 59; and cancelled claim 52.

In view of the above amendments and the following discussion, Applicants submit that none of the claims now pending in the application are obvious under the provisions of 35 U.S.C. §103.

It is to be understood that, by amending the claims, Applicants do not acquiesce to the Examiner's characterizations of the art of record or to Applicants' subject matter recited in the pending claims. Further, Applicants are not acquiescing to the Examiner's statements as to the applicability of the art of record to the pending claims by filing the instant response.

Amendments to the Claims

By this response, Applicants have amended claims 23, 24, 27, 39, 43, 49, 51 and 59. The amendments are fully supported by the Application as originally filed. For example, the amendments to the claims are supported at least by page 101, lines 12-18. Thus, no new matter has been added and the Examiner is respectfully requested to enter the amendments.

Furthermore, the amendments to the claims represent subject matter that has already been considered, in a substantially similar form, by the Examiner as part of previous submitted claims 32 and 52. Therefore, the amendments to the claims will not require a further search by the Examiner and should thus be admitted in response to the Final Office Action.

Objections to the Claims and Allowable Subject Matter

The Examiner has objected to claims 52-58 as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicants thank the Examiner for indicating the allowable subject matter with respect to claims 52-58. In response, the Applicants have incorporated the limitations

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of claim 52 into the claim from which it depends, independent claim 51. Thus, it is believed that claims 51 and 53-58 are now allowable.

35 U.S.C. §103 Rejection of Claims 23, 24, 27, 32-51, and 59

The Examiner has rejected claims 23, 24, 32-51, and 59 under 35 U.S.C. §103(a) as being unpatentable by U.S. Patent No. 5,003,384 to Durden (hereinafter "Durden") in view of U.S. Patent No. 4,745,549 to Hashimoto (hereinafter "Hashimoto").

Regarding claim 51, the Applicants have incorporated the limitations of claim 52 into independent claim 51. Since the Examiner has indicated claim 52 as allowable if rewritten in independent form including all of the limitations of its base claim and any intervening claims, the rejection against this claim is now moot.

The Applicants respectfully traverse the rejection against the remainder of the claims.

The test under 35 U.S.C. §103 is not whether an improvement or a use set forth in a patent would have been obvious or non-obvious; rather the test is whether the claimed invention, considered as a whole, would have been obvious. The Durden and Hashimoto references alone or in combination fail to teach or suggest Applicants' invention as a whole.

Specifically, the Durden and Hashimoto references fail to teach or suggest at least "means for creating terminal group information indicating group assignments for the terminals using the programs watched counts; and means for transmitting the terminal group information to the terminals in a control information stream," as recited in claim 23 as amended.

The Durden reference discloses an impulse pay-per-view system. The Examiner acknowledges "Durden fails to disclose counts corresponding to the number of times a program is watched, group assignment information that correlates counts with categories of videos, which may be sent to a terminal" (page 10 of the 1/11/2006 Office Action). The Applicants respectfully submit that Durden further fails to teach or suggest creating terminal group information indicating group assignments, regardless of whether it correlates to categories of videos. The Durden reference also fails to teach or suggest creating terminal group information indicating group assignments for the terminals using the programs watched counts.

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The Durden reference also fails to teach or suggest a means for transmitting the terminal group information to the terminals. Regarding transmitting the terminal group information to the terminals, on page 9 of the Office Action, the Examiner alleges that column 9, line 66, to column 10, line 17, of the Druden reference provides this teaching. The Applicants respectfully disagree. The cited portion of the Druden reference only recites (emphasis added below):

"The present invention is specifically concerned with a number of unique set-top transactions which may be sent via ATX 10 to effect increased control and enhance the diversity of an impulse pay-per-view system. A number of these transactions were mentioned briefly above and will be discussed in greater detail below.

The Authorize IPPV Event transaction will be discussed first with reference to FIG. 2. FIG. 2 illustrates bit patterns which may be included in this transaction. E0-E3 represent the IPPV event ID. CH0-CH1 represent the associated channel. F represents the free time. CT0-CT1 represent a counter reset value. SL represents a slot value. An additional bit pattern (not shown) may be included to specify the purchase window. As noted above, this authorization transaction authorizes the channel corresponding to a PPV event in all converters in which the specified PPV identification code has been previously loaded, as well as authorizing the channel corresponding to an IPPV event in all converters with IPPV modules that have requested the event."

Thus, the Durden reference discloses an authorization transaction which authorizes a PPV event in converters in which a PPV identification code has already been loaded, or in converters that have requested an IPPV event. However, this does not equate to transmitting group assignments to the terminals. The Durden reference does not disclose anything concerning group assignments. For example, the Durden reference is silent on to which terminals the authorization transaction is sent. For example, the authorization transaction of the Durden reference could be information sent to every set-top terminal, and only those terminals having the specified PPV identification code, or those terminals that requested the event, would be authorized. Thus, the Durden reference does not teach or suggest "a means for transmitting the terminal group information to the terminals."

The Hashimoto reference fails to bridge the substantial gap between the Durden reference and the Applicants' invention. The Hashimoto reference discloses

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"evaluating questionnaires collected from end users" (column 2, line 22). However, the Hashimoto reference fails to teach or suggest creating group assignments for terminals using programs watched counts and transmitting the terminal group information to the terminals. Regarding the Hashimoto reference, the Examiner alleges (emphasis added below):

"Hashimoto discloses a coefficient $P_c(j)$ which corresponds to the number of complaints regarding a program which is reflected by how often (the number of times) a given user watches a certain type of programming at specific terminal, this number is then aggregated for a number of terminals (column 6, lines 44-60, column 7, lines 10-25), the databases include group information (column 3, lines 1-7, age group, column 8, line 57) thus aiding a program provider in determining how popular a type of programming is amongst a given audience, and aiding in determining when to air programming.

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify Durden to utilized the counts of Hashimoto, thus aiding a program provider in determining how popular a type of programming is, and aiding in determining when to air programming." (page 10 of the 1/11/2006 Office Action)

Thus, the Examiner alleges the Hashimoto reference teaches group assignments for terminals using programs watched counts at column 3, lines 1-7, and column 8, line 57. However, the cited portion of the Hashimoto reference is simply a question from the questionnaire which asks a subscriber in what age group the subscriber belongs. The age group disclosed by the Hashimoto reference is not related to programs watched counts, that is the answer of the subscriber to the age group question does not depend upon programs watched counts. Moreover, the Hashimoto reference does not teach or suggest transmitting the answers to the age group question back to the subscribers, and thus does not teach or suggest transmitting the group assignment information to the terminals.

Thus, the Durden and Hashimoto references fail to teach or suggest the Applicant's invention as a whole.

Substantially similar arguments are hereby made regarding independent claims 24, 27, 32, 39, 43, 49 and 59, by referring to the above argument in regards to claim 23, and instead of "programs watched counts", the group assignments depend upon "programs watched matrices," "program category rankings," or similar terms.

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As such, Applicants' submit that independent claims 23, 24, 27, 32, 39, 43, 49 and 59 are non-obvious and fully satisfy the requirements of 35 U.S.C. §103 and are patentable thereunder. Furthermore, each of the remaining rejected claims depends from one of these claims and recites additional limitations therefrom. Therefore, these remaining rejected claims are patentable for at least the reasons discussed above with respect to the claims from which they depend.

Therefore Applicants respectfully request that all of the rejections be withdrawn.

Official Notices

The Examiner has taken Official Notice at least on pages 12, 13, and 14, at least with respect to claims 37, 42, 46, 47, and 56. The Applicant respectfully traverses each Official Notice taken by the Examiner. The Applicant respectfully submits that each Official Notice is erroneous at least because the claim limitations which are rejected using the Official Notice are believed to be not well known at least within the context of the independent claims from which these limitations depend.

The Examiner is respectfully requested to provide documentary evidence to substantiate each Official Notice (see MPEP 2144.03(C)). Without this documentary evidence, the Applicant respectfully submits that the Official Notices must be withdrawn.

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CONCLUSION

Thus, Applicants submit that none of the claims presently in the application are obvious under the provisions of 35 U.S.C. §103. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone Stephen Guzzi, at (732) 383-1405, or Eamon J. Wall, at (732) 530-9404, so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

Dated: 2/7/08

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